



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 5, 1997

Mr. Scott A. Durfee  
General Counsel  
Office of the District Attorney  
Harris County  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR97-2643

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110670.

The Harris County District Attorney's Office (the "district attorney") received a request for "an opportunity to review and copy all files, records, electronically stored information and any other documents in the possession of the Harris County District Attorney's Office pertaining to the 1984 trial of Kenneth Ray Ransom in cause number 384,336." Specifically, the requestor seeks documents concerning "(1) the investigation of the criminal incident, (2) the trial of the underlying matter, and (3) the investigation or prosecution of any proceedings after trial." You have submitted to this office a representative sample of the information requested, which you assert is responsive to the request.<sup>1</sup> You state that "[c]ertain documents will be disclosed to the requestor," however, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents you have submitted.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We first consider whether the grand jury subpoenas and transcripts contained in the submitted records need not be released. This office has previously held that where a district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984). Because section 552.003(b) of the Government Code specifically excludes the judiciary, of which the grand jury is a part, from the provisions of the Open Records Act, we conclude that the grand jury subpoenas are not subject to the provisions of Open Records Act, and therefore need not be disclosed.<sup>2</sup> However, to the extent that the submitted information, which you have classified as grand jury records, is not within the constructive possession of the grand jury, we must consider whether any of the claimed exceptions are applicable to the information.

We next consider your assertion that section 552.108 of the Government Code excepts the submitted information from required public disclosure. Section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: . . . (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You have submitted to this office documents which you indicate constitute a representative sample of the district attorney's litigation file, and assert that the information is prepared by an attorney representing the state, which "reflects the mental impressions or legal reasoning" of the attorney. Upon review of the information submitted in Exhibit A, we conclude that it was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or represents the mental processes or legal reasoning of an attorney representing the state. Therefore, we conclude you may withhold the information in Exhibit A under 552.108(a)(3).

We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14<sup>th</sup> Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559

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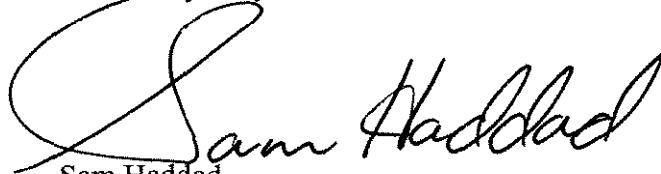
<sup>2</sup>However, the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney. Open Records Decision No. 513 (1988).

(Tex. 1976); Open Records Decision No. 127 (1976). Although section 552.108 authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.<sup>3</sup>

Finally, we address your assertion that section 552.101 of the Government Code excepts some information from required public disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, any CHRI that falls within the ambit of these state and federal regulations must be withheld from the requestor.

As we resolve your request under sections 552.003, 552.101 and 552.108, we need not specifically address your claimed exception under section 552.103 at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>Basic information in an offense report generally may not be withheld under section 552.103. Open Records Decision No. 597 (1991).

Ref.: ID# 110670

Enclosures: Submitted documents

cc: Mr. Jim Marcus  
Executive Director  
Texas Defender Service  
412 Main, Suite 1150  
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(w/o enclosures)